



6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this notice announces that the Information Collection Request (“ICR”) abstracted below has been forwarded to the Office of Management and Budget (“OMB”) for review and comment. The ICR describes the nature of the information collections and its expected costs and burden.

DATES: Comments must be submitted on or before **[INSERT DATE 30 DAYS**

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments regarding the burden estimate or any other aspect of the information collections, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (“OIA”) in OMB within 30 days of this notice’s publication by either of the following methods. Please identify the comments by “OMB Control Nos. 3038-0052 or 3038-0074.”

- By email addressed to: *OIRAsubmissions@omb.eop.gov* or
- By mail addressed to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street, NW., Washington DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (“CFTC” or “Commission”) by either of the following methods. The copies should refer to “OMB Control Nos. 3038-0052 or 3038-0074.”

- By mail addressed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581;
- By Hand Delivery/Courier to the same address; or
- Through the Commission’s website at <http://comments.cftc.gov>. Please follow the instructions for submitting comments through the website.

Please submit your comments using only one method. A copy of the supporting statements for the collection of information discussed herein may be obtained by visiting <http://RegInfo.gov>.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.¹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene

¹ 17 CFR 145.9.

language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: David Steinberg, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, 202-418-5102 or *dsteinberg@cftc.gov*, and refer to OMB Control Nos. 3038-0052 or 3038-0074.

SUPPLEMENTARY INFORMATION:

Title: Core Principles and Other Requirements for Designated Contract Markets (OMB Control No. 3038-0052), and Core Principles and Other Requirements for Swap Execution Facilities (OMB Control No. 3038-0074). This is a request for an extension of currently approved information collections.

Abstract: The regulations governing designated contract markets (“DCMs”) were adopted pursuant to the requirements of the Commodity Futures Modernization Act of 2000 (“CFMA”).² Part 38 of the Commission’s regulations governs the activities of DCMs. The information collected pursuant to part 38 is necessary for the Commission to evaluate whether entities operating as, or applying to become DCMs, comply with the part 38 requirements including 23 core principles. Collection 3038-0052 was created in response to the part 38 regulatory requirements for DCMs.

In June 2012, the Commission implemented core principles and other requirements for DCMs (“DCM Final Rules”).³ The Commission stated in the DCM

² 7 U.S.C. 1 *et seq.*

³ 77 FR 36612 (June 19, 2012).

Final Rules that 18 DCMs were registered with the Commission.⁴ However, since publication of the DCM Final Rules, the number of DCMs registered with the Commission has decreased from 18 to 15. Accordingly, the Commission is revising the below burden statement for OMB Control No 3038-0052 to account for the decrease in the number of registered DCMs.

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) added new section 5h to the Commodity Exchange Act (“CEA”) to impose requirements concerning the registration and operation of swap execution facilities (“SEFs”), which the Commission has incorporated in part 37 of its regulations. These information collections are needed for the Commission to ensure that SEFs comply with these requirements. Among other requirements, part 37 of the Commission’s regulations imposes SEF registration requirements for a trading platform or system, obligates SEFs to provide transaction confirmations to swap counterparties, and requires SEFs to comply with 15 core principles. Collection 3038-0074 was created in response to the part 37 regulatory requirements for SEFs.

In September 2016, the Commission published a 30-Day Notice of Intent to Renew Collection 3038-0074 (30-Day Renewal Notice) and stated that 23 SEFs were registered with the Commission.⁵ However, since publication of the 30-Day Renewal Notice, the Commission has granted permanent registration to two additional SEFs, for a total of 25 registered SEFs. Therefore, the Commission is revising the below burden statement for OMB Control No. 3038-0074 to account for the increase in the number of registered SEFs.

⁴ *Id.* at 36663.

⁵ 81 FR 65630 (Sept. 23, 2016).

In January 2018, the Commission adopted regulation 9.11(b)(3)(ii) requiring a DCM or SEF (collectively, “exchange”) to include two additional elements in the disciplinary or access denial notice action provided to the National Futures Association.⁶ First, an exchange must include the type of product (as applicable) involved in the adverse action.⁷ Requiring an exchange to provide this information in the disciplinary or access denial notice will provide the Commission, market participants, the public, and other exchanges with greater transparency concerning where market abuses originate and whether the abuses are concentrated among certain product types. Second, an exchange must indicate in its notice of disciplinary or access denial actions whether the violation underlying the notice resulted in financial harm to any customers. This requirement codifies the clarification contained in an advisory previously issued by the Commission (“Part 9 Advisory”).⁸ The Commission believes that the inclusion of customer harm is essential because it cannot effectively perform its regulatory and oversight functions without knowledge of those instances in which brokers violate their fiduciary duty to customers by taking advantage of customer orders and engaging in fraudulent activity. The collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC’s regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The *Federal Register* notice with a 60-day comment period soliciting comments on this collection of information was published on

⁶ 83 FR 1538 (Jan. 12, 2018).

⁷ For example, a product trading on a DCM might be specified as a July 2016 Eurodollar future; while a product trading on a SEF may be a CDX North American High Yield Series 26 5 year.

⁸ The Part 9 Advisory permitted an exchange to file disciplinary or access denial notices with the Commission or the National Futures Association. 64 FR 39915 (July 23, 1999).

January 12, 2018 (83 FR 1609). The Commission did not receive any comments addressing the 60-Day Notice.

Burden Statement: The Commission believes that the additional burden for an exchange to add the two additional elements in the contents of the disciplinary or access denial notice is de minimis.⁹ Accordingly, the Commission is maintaining its current estimate of the burden for both collections as result of these reporting requirements. However, the Commission is amending its estimates for the collections to account for the change in the number of DCMs and SEFs currently registered with the Commission. The current respondent burden for these collections are estimated to be as follows:

- OMB Control No. 3038-0052 (Core Principles and Other Requirements for Designated Contract Markets)

Number of Respondents: 15.

Estimated Annual Burden Hours Per Respondent: 490.5.

Estimated Total Annual Burden Hours on Respondents: 7,357.5.

Frequency of Collection: As applicable.

- OMB Control No. 3038-0074 (Core Principles and Other Requirements for Swap Execution Facilities)

Number of Respondents: 25.

Estimated Annual Burden Hours Per Respondent: 1,000.

⁹ The Commission stated in the Notice of Proposed Rulemaking that the burden associated with Commission regulation 9.11(b)(3)(ii) requiring an exchange to specify the product involved in the disciplinary or access denial action would be de minimis. 82 FR 7745 (Jan. 23, 2017). The Commission did not receive any comments regarding this determination. The Commission estimates that it will take an exchange just a few seconds to add the product involved in the adverse action and whether the violation underlying the notice resulted in financial harm to any customers.

*Estimated Total Annual Burden Hours on Respondents: 25,000.*¹⁰

Frequency of Collection: As applicable.

The regulations require no new startup or operations and maintenance costs.

(Authority 44 U.S.C. 3501 *et seq.*)

Dated: April 5, 2018.

Robert N. Sidman,

Deputy Secretary of the Commission.

¹⁰ The Commission notes that collection 3038-0074 includes an additional 1,200 burden hours for SEF registration applicants that have not been affected by this amendment. Therefore, the total burden for this collection is 26,200 hours.

